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**ARKANSAS-OKLAHOMA RAILROAD, INC.  
LAW DEPARTMENT  
P.O. BOX 185  
MORTON, ILLINOIS 61550**



December 9, 2003

Vernon A. Williams,  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

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Office of Proceedings

DEC 10 2003

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RE: City of Lincoln Petition for Declaratory Order  
FD No. 34425

Dear Secretary Williams:

Enclosed, for filing, is an original and ten copies of our Notice of Intent to Participate and Motion to Reconsider Procedural Schedule, and an extra copy which I ask that you file-stamp and return to me in the enclosed SSAE.

Please call me if you have any questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Daniel A. LaKemper".

Daniel A. LaKemper,  
Vice President - Law.

Enclosures.

209583

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34425

CITY OF LINCOLN

PETITION FOR DECLARATORY ORDER

NOTICE OF INTENT TO PARTICIPATE  
AND  
MOTION TO RECONSIDER  
PROCEDURAL SCHEDULE

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LaKemper Law Office  
P.O. Box 185  
Morton, Illinois 61550  
Tel.: (309) 678-6048  
Fax: (309) 697-8486

Attorney for  
Arkansas-Oklahoma Railroad, Inc.

Dated: December 9, 2003.

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34425

CITY OF LINCOLN  
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PROCEDURAL SCHEDULE

Comes now Arkansas-Oklahoma Railroad, Inc. ("AOK"), a Class III rail carrier operating in the State of Oklahoma, and hereby states as follows:

1. AOK intends to participate in the above-captioned proceeding, as an interested party.
2. AOK respectfully requests that the Board reconsider its decision as to the procedural schedule in this proceeding, served December 8, 2003, and grant Lincoln Lumber Co.'s request that the Board publish notice of the filing of the Petition for Declaratory Order in the Federal Register, and provide an opportunity for filing of public comments on the issue of involuntary trail use of operating railroad right-of-way.
3. AOK agrees with Lincoln Lumber Co. and interested parties, Pioneer Railcorp and Minnesota Commercial Railway Co. that this proceeding involves an important issue of general transportation policy on which public notice and opportunity for comment are warranted.

4. To allow a local government to decide how much of a railroad right of way is necessary for railroad operation, and arbitrarily condemn that portion which the local government deems unnecessary, would do violence to the preemption provisions of the Interstate Commerce Commission Termination Act (49 U.S.C. §10501(b)), and is one upon which many railroads may wish to weigh in.

5. The Board's current procedural schedule is unrealistic, particularly since most companies are currently focused upon the holiday season and the close of the year.

6. The Board's December 8, 2003 Decision places too much emphasis on the City's allegation that speed is necessary to preserve funding for the trail project. AOK is informed and believes that funding deadlines are a common excuse used by trail supporters to support undue haste, and, when a deadline is not met, it is almost always extended, often repeatedly. AOK is unaware of any situation in which funding has actually been withdrawn from any trail project due to delay in land acquisition.

7. As pointed out by the filing of Pioneer Railcorp and Minnesota Commercial Railway, this is not a local issue. It has broad, national implications, particularly for Class III carriers, that lack the resources to effectively fight taxpayer-financed assaults on their right-of-ways. For small carriers, condemnation of portions of their right-of-ways could become back-door abandonment proceedings. This case has huge legal implications. Allowing local governments to make decisions as to what right of way a carrier "needs" is clearly in violation of the National Transportation Policy, the intent of Congress as expressed in the Interstate Commerce Commission Termination Act, and the Commerce Clause of the Constitution.

8. Given the magnitude of the issue presented in this proceeding, and the likelihood that, if the City is successful, trail supporters will use this decision to impose involuntary shared use on other railroads around the country, to the detriment of rail operations, deciding this case with undue haste is not in the public interest.

WHEREFORE, Arkansas-Oklahoma Railroad, Inc. respectfully requests that it be permitted to participate as an interested party, and moves that the Board reconsider its procedural schedule, and grant Lincoln Lumber Company's request to publish notice of this proceeding in the Federal Register, and adopt a new procedural schedule in accordance with the request of Lincoln Lumber Company.

December 9, 2003.

Respectfully submitted,



Daniel A. LaKemper, Esq.  
LaKemper Law Office  
P.O. Box 185  
Morton, Illinois 61550  
Tel.: (309) 678-6048

Attorney for Arkansas-Oklahoma Railroad, Inc.

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by United States Mail, first class, postage fully pre-paid, this 9<sup>th</sup>. Day of December, 2003 upon:

Charles H. Montange  
426 N.W. 162<sup>nd</sup>. St.  
Seattle, WA 98177

Thomas McFarland  
208 S. LaSalle St., Suite 1890  
Chicago, Illinois 61604

